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San Antonio Fishing Corp., *F/V Santo Antonio* and Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO.
Case 1-CA-33228

July 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge and amended charge filed by the Union on July 31, 1995, and April 17, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 19, 1996, against Santo Antonio Fishing Corp., *F/V Santo Antonio*, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On June 24, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On June 26, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 4, 1996, notified the Respondent that unless an answer were received by June 11, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in New Bedford, Massachusetts, has operated a fishing vessel known as *F/V Santo Antonio* and has been engaged in the commercial fishing business. Annually, the Respondent, in conducting its business operations, sold and shipped from its fishing vessel fish valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts and sold and shipped from its fishing vessel fish valued in excess of \$50,000 directly to fish auction houses located within the Commonwealth of Massachusetts, each of which are directly engaged in interstate commerce. In addition, the Respondent, in conducting its business operations, annually purchased and received at its New Bedford, Massachusetts facility and fishing vessel products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All crew members employed by the Respondent on its fishing vessel *Santo Antonio*, but excluding professional employees, guards, captains and all other supervisors as defined in the Act.

Since about February 10, 1986, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit, and since that date the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was a memorandum of understanding extending the 1986-1989 agreement from February 10, 1992, through February 10, 1995 (the 1992 Agreement). At all times since February 10, 1986, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About March 22, 1995, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit. Since about February 11, 1995, the Respondent has failed and refused to continue those terms and conditions of employment for the unit in existence upon the expiration of the 1992 Agreement, including, but not limited to, failing

and refusing to continue to make payments to the New Bedford Fisherman's Welfare Plan and Pension Trust. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

Since about June 2, 1995, the Union has requested that the Respondent meet and bargain with the Union as the exclusive collective-bargaining representative of the unit for a new collective-bargaining agreement. Since about that same date, the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) since February 11, 1995, by unilaterally failing and refusing to continue the terms and conditions of employment for the unit by, inter alia, ceasing to make contributions to the New Bedford Fisherman's Welfare Plan and Pension Trust on behalf of its unit employees, we shall order the Respondent to rescind the unilateral changes, continue the terms and conditions of employment of the unit in effect upon the expiration of the 1992 Agreement until a new agreement or good-faith impasse is reached, and make the unit employees whole, with interest, for any loss of earnings attributable to its unlawful conduct. Back-pay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Respondent to make whole its unit employees by making all payments to the New Bedford Fisherman's Welfare Plan and Pension Trust

that would have been made since February 11, 1995, but for the Respondent's unlawful failure to make them, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.¹

In addition, having found that the Respondent withdrew recognition from the Union on March 22, 1995, and has failed, since about June 2, 1995, to meet and bargain with the Union as the exclusive collective-bargaining agent of the unit, we shall order it to meet and bargain with the Union on request.

ORDER

The National Labor Relations Board orders that the Respondent, Santo Antonio Fishing Corp., F/V *Santo Antonio*, New Bedford, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO as the exclusive collective-bargaining representative of the following unit or failing or refusing to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit:

All crew members employed by the Respondent on its fishing vessel *Santo Antonio*, but excluding professional employees, guards, captains and all other supervisors as defined in the Act.

(b) Failing or refusing to continue in effect the terms and conditions of employment for the unit including, but not limited to, making payments to the New Bedford Fisherman's Welfare Plan and Pension Trust.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(a) Recognize and bargain on request with the Union as the exclusive collective-bargaining representative of the unit, and if an agreement is reached, embody the terms and conditions in a signed agreement.

(b) Rescind the unilateral changes made since February 11, 1995, and continue the terms and conditions of employment of the unit in effect upon the expiration of the February 10, 1992–February 10, 1995 collective-bargaining agreement until a new agreement or good-faith impasse is reached.

(c) Make all payments to the New Bedford Fisherman's Welfare Plan and Pension Trust that would have been made since February 11, 1995, but for the Respondent's unlawful failure to make them, and make the unit employees whole, with interest, for any loss of earnings, benefits, or expenses attributable to its unlawful unilateral changes, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New Bedford, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO as the exclusive collective-bargaining representative of the following unit or fail or refuse to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit:

All crew members employed by us on our fishing vessel *Santo Antonio*, but excluding professional employees, guards, captains and all other supervisors as defined in the Act.

WE WILL NOT fail or refuse to continue in effect the terms and conditions of employment for the unit, including, but not limited to, making payments to the New Bedford Fisherman's Welfare Plan and Pension Trust.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit, and if an agreement is reached, embody the terms and conditions in a signed agreement.

WE WILL rescind the unilateral changes made since February 11, 1995, and honor the terms and conditions of employment of the unit in effect upon the expiration

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

of the February 10, 1992–February 10, 1995 collective-bargaining agreement, until a new agreement or good-faith impasse is reached.

WE WILL make all payments to the New Bedford Fisherman's Welfare Plan and Pension Trust that would have been made since February 11, 1995, but for our unlawful failure to make them, and WE WILL

make our unit employees whole, with interest, for any loss of earnings, benefits, or expenses attributable to our unlawful unilateral changes.

SANTO ANTONIO FISHING CORP., *F/V*
Santo Antonio